6101.6

- (2) Respondent. The respondent may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. Alternatively, if not prohibited by agency regulation or otherwise, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.
- (3) Others. The Board may, on motion, in its discretion, permit a special or limited appearance, such as by an amicus curiae. Permission to appear, if granted, will be for such purposes and in such manner as allowed by the presiding judge.
- (b) Notice of appearance. Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, or application shall be deemed to have appeared on behalf of the appellant, petitioner, or applicant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. Other attorneys actively participating in the proceedings before the Board must file notices of appearance. A notice of appearance in the form specified in the appendix to the rules of this chapter is sufficient. Attorneys representing parties before the Board are required to list the state bars to which they are admitted and their state bar numbers or other bar identifiers.
- (c) Withdrawal of appearance. Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, facsimile machine number, and e-mail address, if available, of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008; 76 FR 50928, Aug. 17, 2011]

6101.6 Pleadings and amendment of pleadings [Rule 6].

- (a) Pleadings required and permitted. Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.
- (b) Complaint. No later than 30 calendar days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim.
- (c) Answer. No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (e) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.
- (d) Small claims and accelerated procedures. When an appellant elects to use the small claims or accelerated procedures described in 6101.52 and 6101.53 (Rules 52 and 53), the Board may shorten the time for filing the complaint and the answer.
- (e) Amendment of pleadings. Each party to an appeal may amend its

pleadings once without leave of the Board at any time before a responsive pleading is filed. The Board may permit other amendments on conditions fair to both parties. A response to an amended pleading will be filed within the time set by the Board.

(f) Amendments to conform to the evidence. When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may order the parties to amend the pleadings to conform to the proof or may order that the record be deemed to contain amended pleadings.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

6101.7 Service of papers other than subpoenas [Rule 7].

(a) On whom and when service must be made. Except for subpoenas (6101.16 [Rule 16]) and documents filed in camera (6101.9(c) [Rule 9(c)]), when a party sends a document to the Board it must at the same time send a copy to the other party by an equally or more expeditious means of transmittal. The parties will confer and agree upon the method they will use to serve one another. They may agree to use electronic mail, facsimile, overnight courier, hand delivery, or any other mutually acceptable method for accomplishing service promptly and efficiently.

(b) Proof of service. A party sending a document to the Board must represent to the Board that a copy has also been sent to the other party. This may be done by certificate of service, by the notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to show the Board that the other party has been provided a copy.

(c) Failure to make service. If a document sent to the Board by a party does not show that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has re-

ceived a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

6101.8 Motions [Rule 8].

(a) How motions are made. Motions may be oral or written. A written motion shall state the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. Section 6101.23 (Rule 23) prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party. Except for joint motions by the parties, all motions must represent that the moving party has attempted to discuss the grounds for the motion with the nonmoving party and tried to resolve the matter informally.

(b) When motions may be made. A motion filed in lieu of an answer pursuant to 6101.6(c) (Rule 6(c)) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by the rules of this chapter.

(c) *Dispositive motions*. The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

- (2) Motions to dismiss for failure to prosecute:
- (3) Motions for summary relief (analogous to summary judgment); and
- (4) Any other motion to dismiss.
- (d) Other motions. Other motions may be made in good faith and in proper form. When filing a motion for an enlargement of time, the moving party shall state that it has contacted the